

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1457 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ANITABEN KANUBHAI RANCHHODBHAIVASAVA

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. District Magistrate, Bharuch, passed an order on August 8, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Smt. Anitaben Kanubhai Ranchhodbhai Vasava of Nizamwadi, Bharuch, under

the provisions of the PASA Act, after branding her as a 'bootlegger'.

2. The detaining authority took into consideration seven offences registered against the detenu under the Bombay Prohibition Act. Last such offence is relating to an incident dated July 17, 1999. The detaining authority took into consideration statements of three anonymous witnesses whose identity is not disclosed by the detaining authority in exercise of powers under Section 9(2) of the PASA Act by claiming privilege in public interest. The detaining authority found that the activities of the detenu are detrimental to public order and, therefore, she is required to be immediately prevented from pursuing her activities. The authority found that the goal cannot be achieved by resorting to less drastic remedies under ordinary laws and, therefore, the detenu was detained under the provisions of the PASA Act.

3. The petitioner/detenu has challenged the order of detention on various counts. However, Ms. Kachhavah, learned appearing for the petitioner, submitted that the order is bad due to improper exercise of powers under Section 9(2) of the PASA Act. She submitted that the detaining authority has not undertaken the exercise expected of it for recording a satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act in public interest. The authority has not properly considered the background, character, antecedents, etc. of the detenu while consider the correctness and genuineness of the statements and the fear expressed by the witnesses qua the detenu.

3.1 As regards the registered offences, it is contended that the Forensic Science Laboratory report in respect of the offences registered against the detenu is not supplied either with the grounds of detention or after making a representation on behalf of the detenu. It is, therefore, contended that the right of making a representation envisaged under Article 22(5) of the Constitution is infringed. It is, therefore, contended that the order may be quashed and set aside and the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. In all fairness, after consulting the file, he concedes that the Chemical Analyser's report from the Forensic Science Laboratory in respect of the registered offences, though demanded by the detenu by making a representation, appears to have

been not supplied to the detenu.

5. Having regard to rival side contentions, it is amply clear from the papers supplied along with the grounds of detention that the detaining authority has put an endorsement below the statements of anonymous witnesses thus:

"Examined the witness. His name may be kept secret.

Sd/-

District Magistrate,
Bharuch."

The detaining authority has not filed any affidavit in reply. Therefore, there is nothing to indicate that the detaining authority has considered the background, character, antecedents, etc. of the detenu (Bai Amina v. State of Gujarat & Ors., 1993(2) GLR 1659). Therefore, there is improper exercise of powers under Section 9(2) of the PASA Act. The statement of anonymous witnesses, therefore, cannot be looked into.

5.1 Now, coming to the registered offences, copy of the representation made to the detaining authority on February 21, 2000 indicate that there was a specific demand raised on behalf of the detenu for copy of the report of the Chemical Analyser as well as the statements of police witnesses. The said representation was received by the detaining authority on February 22, 2000 and forwarded to the Government on February 24, 2000, which was received by the Government on February 29, 2000 and rejected by the Government on March 2, 2000. Mr. Dave, learned Assistant Government Pleader, has conceded that the communication does not indicate supply of Chemical Analyser's report to the detenu, though demanded. Under the circumstances, right of the detenu of making a representation in respect of registered offences also can be said to have been infringed. The continued detention of the detenu is, therefore, rendered bad in law. The petition deserves to be allowed on this ground.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 8, 1999, passed against the detenu is hereby quashed. The detenu-Smt. Anitaben Kanubhai Ranchhodbhai Vasava is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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